IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-12-2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE K.P. SIVASUBRAMANIAM

L.P.A.NO.207 OF 2002
and
C.M.P.NO.720 OF 2003

Perumal,
S/o. Muruvagramany
alias Murugesa Gramany .. Appellant / Defendant

Vs.

Boyot Selvacarassou,
S/o. Boyot Virappin .. Respondent / Plaintiff

Letter Patent Appeal filed under Clause XV of Letters Patent Act, 1862 against the decree and judgment dated 3.4.2002 passed by this Court in A.S.No.593 of 1987, upholding the judgment and decree dated 24.12.1986, on the file of the Court of the Principal Subordinate Judge at Pondicherry in O,.S.No.105 of 1983.

For Appellant : Mr.M. Kalyanasundaram
Senior Counsel for
Mr.N.Srinivasa Raghavan.

For Respondent : Mr.G. Masilamani
Senior Counsel for
M/s.G.M. Mani Associates

J U D G M E N T

P.K. MISRA, J

Defendant is the appellant against a confirming decision.

2. The suit was filed for declaration of title and recovery of possession with past mesne profit at Rs.75/- and future mesne profit at the rate of Rs.3/- per month. The disputed property is 1800 sq.ft of land with a house thereon appurtenant in Cadastre No.159 and 159 bis in Muthialpet, Pondicherry.

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3. According to the plaintiff, the disputed land belonged to one Ponnurangam, who expired during 1952 leaving behind three sons, Rangasamy Narasingam, Pandurangam and widow of pre-deceased son Sundaramurthy. It is claimed that Ponnurangam had executed a Will dated 29.1.1940 bequeathing all his properties, including the disputed property, in favour of the said persons. It is further claimed that on 17.5.1979 a partition was effected among the aforesaid persons, wherein the disputed property fell to the share of Pandurangam, who subsequently sold the same in favour of the plaintiff by a registered sale deed dated 19.2.1981. During the life time of the original owner Ponnurangam, one Dhanusu Pillai was a tenant in respect of vast area of lands, including the disputed land. A portion of such tenanted land had been sublet by Dhanusu Pillai and his sons. The disputed land was given to the father of the defendant by Dhanusu Pillai on the basis of oral lease on a monthly rent of Rs.3/- in the year 1959. After the death of the defendant's father, the present defendant continued to occupy the disputed property by paying rent to the son of Dhanusu Pillai. Subsequently, Mutuhukrishnan Pillai delivered constructive possession in favour of the plaintiff's vendor and the defendant was a tenant holding over and had agreed before Panchayatiar to pay the rent to the plaintiff, after the same was purchased by the plaintiff. Since the defendant failed to pay the rent inspite of demands and started making construction without the consent of the plaintiff, the present suit was filed. It is further claimed that in the early Sixties, there was a Referry case before the former French Court in Pondicherry, where the defendant had claimed adverse possession. However, the Referry Court rejected the contention of the defendant and directed that a suit should be filed to establish his right.

4. In the written statement filed on behalf of the defendant, it is claimed that even though the plaintiff's vendor Pandurangam Pillai was a party in A.S.No.723 of 1969 before the Tribunal Appeal, wherein there was a direction to file a suit, the plaintiff's vendor had not filed any suit and had profitably sold the property. The allegation that the defendant's father was a sub-tenant and subsequently the defendant continued as a tenant had been denied. It is claimed that the defendant and his ancestors were in possession of the disputed property for more than 100 years and the defendant had acquired right by adverse possession.

5. The trial court framed the following issues :-

" 1. Whether the plaintiff's vendor had no title to the suit property ?

2. Whether the defendant is a tenant under the plaintiff's vendor ?

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3. Whether the plaintiff is entitled to a declaration over the plaint schedule property ?

4. Is defendant liable to be evicted ?

5. To what relief are parties entitled ?"

6. Under issue No.1, the trial court held that the plaintiff's vendor had title over the disputed property. Under issue No.2, it was held that the defendant was a tenant under the plaintiff's vendor. Under issue No.3, it was held that the plaintiff was entitled for declaration of title over the disputed property. Under issue No.4, it was held that the plaintiff is entitled to take possession of the land and the superstructure, but he is liable to compensate the value of the superstructure to the tune of Rs.25,100/- to the defendant. Under issue No.5, it was held that the plaintiff was entitled to mesne profit. It was further observed :

> "Since the counter claim of defendant for adverse possession is not upheld but compensation awarded the plaintiff is liable to pay court fee on the amount of compensation awarded to the defendant. In view of the findings on the issues 1 to 4 above, it is ordered that the plaintiff is the absolute owner of the suit property subject to the payment of Rs.25,100/- including court fee payable to the defendant by deposit in court towards superstructure and improvements. Plaintiff granted 2 months time to deposit in court. Defendant liable to deliver possession within 2 months time after such payment or deposit made plaintiff to pay additional court fee of Rs.25,100/- out of the amount to be deposited as aforesaid and deposit into court the balance."
>
> (Emphasis added)

7. The present appellant filed A.S.No.593 of 1987 in this High Court valuing the appeal at Rs.35,975/- as per the decree drawn up by the trial court. At that stage, the present respondent filed C.M.P.No.2856 of 1987 contending that since the suit had been valued at Rs.10,875/- and such suit valuation had not been amended by the plaintiff, the appeal could not have been valued at Rs.35,975/- and the appeal should have been filed as per the original valuation of the suit and the appeal was not maintainable in the High Court, and therefore, the appeal memo should be returned to the appellant. The aforesaid contention was accepted by a learned single Judge by order dated 22.9.1987 and the office was directed to return the appeal to the present appellant for presentation before the District Court. However, at that stage, the present appellant filed L.P.A.No.143 of 1987, wherein a Division Bench observed that the learned single Judge should not have returned the appeal memo on the basis of the application filed by the respondent. It was also observed that

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the question of valuation/jurisdiction would be considered at the time of hearing of the appeal.

8. Learned single Judge has considered the question of maintainability of the appeal along with the merits of the appeal at the time of final hearing. Learned single Judge has also considered the cross-objection filed by the plaintiff in relation to the direction issued by the trial court regarding the payment of Rs.25,100/- to the defendant. Learned single Judge has held that since the suit was valued at Rs.10,875/- and such valuation has not been amended for the purpose of filing appeal, such valuation must govern the field and as such, the appeal was not maintainable in the High Court and the appeal should have been filed before the District Court. Accordingly, it was held that the appeal was not maintainable and similarly the cross objection was also dismissed observing that the cross objection should not have been filed in the High Court, but an appeal could have been presented before the District Court. Learned single Judge also confirmed the findings of the trial court on merit.

9. Against the aforesaid decision of the learned single Judge, the present appeal has been filed. No cross objection or independent appeal had been filed by the plaintiff/respondent against the order passed by the learned single Judge dismissing the cross objection on the ground that such cross objection was not maintainable.

10. Learned Senior Counsel appearing for the appellant has contended that even though the suit was originally valued at Rs.10,875/-, in view of the decree directing the plaintiff to pay Rs.25,100/- and further directing the plaintiff to pay court fee on the said amount and in view of the specific indication indicated in the decree that the valuation of the suit was Rs.35,975/-, the appeal has been filed in the High Court and must be taken to be maintainable. The appellant has further contended that since the plaintiff was suing for declaration of title and recovery of possession, the plaintiff should succeed on the strength of his own title and merely because the defendant failed to prove his independent title, the plaintiff's suit should not have been decreed. In this connection, it is further submitted that the plaintiff has to prove his title an even though he had referred to the Will executed in the year 1940 and the partition had effected in the year 1979, he has not proved the Will nor he has proved the partition deed, and therefore, his title has not been established. It is further contended that the finding that the defendant and his father were tenant is not acceptable and the so called documents in support of the tenancy is fabricated, which should not have been accepted. Counsel for the appellant has also submitted that at any rate the defendant and his

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predecessors were in long adverse possession and the suit should have been dismissed on that ground.

11. Learned Senior Counsel appearing for the respondent has supported the judgments of the courts below.

12. On the aforesaid submissions made by the counsels for both the parties, the following questions arise for determination :-

(1) Whether the appeal filed in the High Court is maintainable ?
(2) Whether the plaintiff has proved the title ?
(3) Whether the defendant has acquired any right of adverse possession ?

13. First comes the question regarding the maintainability of the appeal before the High Court. It was the case of the contesting respondent that the original value of the suit being Rs.10,800/-, appeal against such decree was required to be filed before the District Judge and not before the High Court. It is not disputed that at the relevant time the appeal could be filed before the High Court only if the valuation exceeded Rs.30,000/-. Learned single Judge has accepted such submission made on behalf of the plaintiff/respondent and held that in view of the fact that the original value of the suit was R.10,800/-, the appeal before the High Court was not maintainable and the appeal should have been filed before the District Court.

14. Learned Senior Counsel appearing for the appellant has submitted that as per Section 52 Explanation (1) of the Pondicherry Court Fees and Suit Valuation Act, 1972, fees payable in the appeal is the same as payable in the Court of first instance on the subject matter of the appeal. He has submitted that even though the suit was originally valued at Rs.10,800/-, in view of the specific decree of the trial court directing payment of compensation of Rs.25,100/- for the superstructure, it must be taken that valuation of the suit had exceeded Rs.30,000/-, and therefore, the appeal before the High Court was maintainable.

15. Learned Senior Counsel appearing for the respondent has submitted that if the trial court would have directed the plaintiff to amend the plaint by indicating higher valuation, such a stand would have been accepted, but in the absence of any such specific direction, the contention of the plaintiff cannot be accepted.

16. The decisions relied upon by the learned single Judge in support of the contention that the appeal was not

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maintainable, are distinguishable. In the present case, as rightly submitted by the learned counsel for the appellant, the plaintiff was called upon to pay the court fee on the sum of Rs.25,100/-. The decree itself indicates the value as Rs.35,900/-, which was in excess of Rs.30,000/-. It is of course true that the trial court had not directed for formal amendment of the plaint to change the valuation of the suit, but the fact remains that the decree indicated the valuation as Rs.35,900/-. In view of such specific valuation indicated in the decree, the defendant cannot be penalised for having filed the appeal in the High Court by accepting the valuation indicated in the decree. The contention raised by the appellant is therefore acceptable and the conclusion of the learned single Judge that the appeal was not maintainable in the High Court is not acceptable.

17. The question can be examined from another angle in the light of Section 21(2) of C.P.C. Admittedly, the Subordinate Judge was was dealing with the suit had unlimited pecuniary jurisdiction. Even if the original valuation would have been shown to excess of Rs.30,000/-, such suit would have been tried by the very same Subordinate Judge. Therefore, the question of valuation of the suit is immaterial so far as the pecuniary jurisdiction is concerned. Even where the trial court lacks pecuniary jurisdiction, unless prejudice is caused, such decision by the trial court is not liable to be set aside merely because of any defect in the pecuniary jurisdiction.

18. In the present case, no prejudice is being caused to the respondent by change of Forum of the appeal. If the valuation would have been less than Rs.30,000/-, the appeal would have been filed before the District Court and thereafter the second appeal would have been filed before the High Court. In the present case, the first appeal itself had been filed before the High Court and the second appeal is very much available before the same High Court. The change in valuation does not cause any prejudice to the respondent. Thus, in either view of the matter, the appeal before the High Court in the first instance can be said to be maintainable, particularly when it has not caused any prejudice to the respondent. On the other hand, in view of the specific indication in the decree itself that the valuation is more than Rs.30,000/-, prejudice would be caused to the appellant at this stage if the appeal is not maintainable and the appeal is dismissed only on that ground.

19. Coming to the question regarding title, the learned Senior Counsel appearing for the appellant has vehemently contended that even though the plaintiff has proved the sale deed executed by Pandurangam, he has failed to prove the anterior title of Pandurangam. It is his contention that as per the

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plaintiff's case, the property was inherited by Pandurangam and other 3 sharers by virtue of the Will dated 29.1.1940, said to have been executed by Ponnurangam, however, such Will has not been proved in the suit. It is also submitted that even assuming that Pandurangam and his co-sharers had got the property from Ponnurangam, the plaintiff has failed to prove the alleged partition dated 17.5.1979, wherein the disputed property is alleged to have fallen to the share of Pandurangam, and in the absence of these two missing links, the plaintiff's suit for declaration of title and recovery of possession has to fail.

20. Learned Senior counsel appearing for the respondent on the other hand has submitted that the title of Ponnurangam had been proved by virtue of unimpeachable documentary evidence and, subsequently, in the summary proceedings before the Referry Court, the title of three sons and widow of pre-deceased son of Ponnurangam had been amply proved and thereafter the factum of partition among the four had been recited in the sale deed.

21. On going through the findings of the learned single Judge, we find that the title of Ponnurangam has been proved through various old documents and the learned Senior Counsel for the appellant was not able to displace such conclusion. However, the criticism of the learned Senior Counsel for the appellant regarding non-proving of the Will seems to be justified. Even though the plaintiff has specifically referred to the Will executed by Ponnurangam and even though the Will was referred to here and there in some of the documents and in the proceedings before the Referry Court, yet the plaintiff has not made any worthwhile effort to prove the Will. However, non-proving of the Will in the peculiar facts and circumstances of the present case will not have the effect of displacing the title of four persons, because even assuming that there was no Will executed by Ponnurangam, undisputedly, the property would have devolved upon three sons and the widow of the pre-deceased son as per the normal rule of inheritance, even in the absence of such Will. Therefore, on the basis of the undisputed materials, it can be safely concluded that the three sons and widow of pre-deceased son of Ponnurangam inherited the property, if not on the basis of the Will, at least on the basis of the normal rule of inheritance. The failure on the part of the plaintiff to prove the Will is immaterial.

22. The next contention of the learned Senior Counsel for the appellant is to the effect that the partition deed having not been proved, it cannot be said that the plaintiff's vendor had exclusive title over the disputed property. Even though there is a reference relating to partition among the co-sharers in the sale deed executed in favour of the plaintiff, such recital by itself is not sufficient to prove that the disputed property had

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fallen to the share of the plaintiff's vendor. To that extent, the contention of the learned Senior Counsel for the appellant is justified. However, even this defect in proving the exclusive title of the plaintiff would not enable the appellant to succeed.

23. The defendant himself has set up his own independent title and has also raised the question of acquisition of possession by adverse possession in his submission made before the trial court as well as the first appellate court. In other words, vis-a-vis the plaintiff, the defendant claims to be a person having independent title or may be even a trespasser. If the defendant would be able to prove his independent superior title, obviously, the suit for declaration of title of the plaintiff would fail. The defendant is not tracing the title through any of the other co-sharer, but has set-up a title contrary to the title of the plaintiff or the plaintiff's vendor and other co-sharers. In such an exigency, even assuming that the plaintiff vendor's exclusive title is not proved, recovery of possession may be granted on the basis of the superior title of the plaintiff's vendor and other co-sharers vis-a-vis a trespasser. Even assuming that the plaintiff's vendor and other co-sharers were joint owners, at the worst, it can be taken that the plaintiff became a co-sharer with other three co-sharers of the plaintiff's vendor by virtue of the sale deed and on the basis of the aforesaid status, the suit for recovery of possession against a trespasser can be maintained. Of course, if the defendant would have been claiming a competing title through any of the co-sharers, non-production of the partition deed and non-proving of the exclusive tittle of the plaintiff's vendor would have assumed importance. Since in the present case the defendant is claiming independent title or as a trespasser, even though the plaintiff was not able to prove the exclusive title of his vendor, he can succeed on the basis of the principle that any one of the co-sharers can sue for recovery of possession from a trespasser. The trespasser in such a case cannot succeed by merely proving that the plaintiff does not have exclusive title and has merely a joint title.

24. The trial court as well as the first appellate court had come to the conclusion that the defendant and before him his predecessors were sub-tenants under Dhanushu Pillai, who was a tenant under Ponnurangam and thereafter under the heirs of Ponnurangam. The fact that Dhanushu Pillai and thereafter his son Muthukrishnan Pillai had continued as tenant under Ponnurangam and his heirs is of course proved through various documents, including the finding before the Referry Court and other connected proceedings. However, it is difficult to accept the story of the plaintiff regarding the alleged sub-tenancy. It is the plaintiff's specific case that there was an oral lease in the year 1959 by Dhanushu Pillai in favour of the father of the

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defendant. However, before the trial court, the plaintiff has sought to prove such tenancy through a document alleged to have been executed by the father of the defendant. Since the specific plea of the plaintiff is to the effect that there was an oral lease, it was not understood as to how a sudden written agreement of lease surfaced at the time of adducing evidence. Apart from other suspicious features in the document itself, this basic defect disproves the case of the plaintiff to the effect that the defendant's father was a sub-tenant under Dhanushu Pillai. To that extent, the findings rendered by the trial court and the learned single Judge cannot be accepted. However, this finding will not have the effect of non-suiting the plaintiff unless the defendant is able to prove the adverse possession.

25. The next question is therefore the question of adverse possession. Even though the plea of adverse possession does not appear to have been specifically raised in the written statement and even though no specific issue had been raised before the trial court, the trial court had discussed such aspect under issue No.5 and had come to the conclusion that the defendant had failed to prove the adverse possession. It is not disputed that as per the relevant law applicable at the time of filing of the suit, the period of limitation was 30 years, and therefore, the defendant was required to prove adverse possession for a period of thirty years or more. Even though the defendant has claimed in a vague manner that he and his ancestors were in possession for more than 100 years, there seems to be no acceptable evidence on this score. Since the plaintiff himself admits the possession of the defendant at least from the year 1959, even assuming that the adverse possession commenced from 1959 by the date of filing of the suit in the year 1983, thirty years of adverse possession had not been completed. The trial court a well as the learned single Judge have referred to the relevant materials on record and have come to the conclusion that adverse possession was not proved and we do not find any reason to differ from such finding rendered on the basis of the discussion of oral as well as documentary evidence.

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26. In the result, in view of the conclusions on merit, the appeal is liable to be dismissed. There is no order as to costs. Consequently, C.M.P.No.720 of 2002 is closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

dpk

To

1. The Principal Subordinate Judge at Pondicherry(with records)
2. The Record Keeper, VR Section, High Court, Madras.
3. The Sub Asst. Registrar, Appellate Side, High Court, Madras.
+ 1 CC to M/s.G.M.Mani Associates, SR NO 55947
+ 1 CC to Mr.N.Srinivasa Raghavan, Advocate SR NO 56112

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